

ORIGINAL

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Attorney for Plaintiff  
**Zhenxiang Li**

UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA  
 COMPLAINT

**Zhenxiang Li**

Plaintiff,

v.

**Alberto Gonzales**, United States Attorney  
 General, U.S. Department of Justice;  
**Michael Chertoff**, Secretary of the  
 Department of Homeland Security;  
**Emilio T. Gonzalez**, Director of United States  
 Citizenship and Immigration Services;

Defendants

Case No.

**C07 03253 EDL**

**PLAINTIFF'S ORIGINAL COMPLAINT  
 FOR WRIT IN THE NATURE OF  
 MANDAMUS & DECLARATORY  
 JUDGMENT UNDER 28 U.S.C. § 1361**

**Immigration Case**

Plaintiff, Zhenxiang Li, by and through his attorney of record, opens this lawsuit against the Defendants and will show this Court the following:

1. Plaintiff, Zhenxiang Li, brings this action against the Defendants to compel action on the delayed processing of his I-485, *Application to Register Permanent Residence or Adjust Status*.

This application remains within the jurisdiction of the Defendants who have improperly delayed and withheld action on this application to Plaintiff's detriment.

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2007 JUN 20 P 2:28  
 RICHARD W. WIEKING  
 CLERK  
 U.S. DISTRICT COURT  
 NO. DIST. OF CA. S.D.

FILED

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**PARTIES**

2. Plaintiff, Zhenxiang Li, a resident of Contra Costa County, is the applicant of a delayed I-485, *Application to Register Permanent Residence or Adjust Status* ("I-485" or "Application"), filed with United States Citizenship and Immigration Services ("USCIS").

3. Defendant, Alberto Gonzales, is the Attorney General of the United States and this action is brought against him in his official capacity. He is authorized to adjust to permanent residence status certain aliens who have been admitted to the United States, and is further authorized to delegate such powers to other government officials.

4. Defendant, Michael Chertoff, is the Secretary of the Department of Homeland Security ("DHS"), and this action is brought against him in his official capacity. Defendant Chertoff is generally charged with enforcement of the Immigration and Nationality Act, which provides for the processing of adjustment of status applications.

5. Defendant, Emilio T. Gonzalez, is the Director of USCIS, and this action is brought against him in his official capacity. USCIS is an agency within the DHS to which DHS' authority has, in part, been delegated. Defendant Gonzalez is generally charged with the overall administration of immigration benefits and services.

**JURISDICTION**

6. Jurisdiction in this case is proper under 28 U.S.C. §§ 1331 and 1361, 5 U.S.C. §§ 551, *et seq.* and 701, *et seq.*, and 28 U.S.C. § 2201 *et seq.* Relief is requested pursuant to said statutes. Additionally, attorney fees and costs will be sought pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412(d) and 5 U.S.C. § 504 *et seq.*

**VENUE**

7. Venue is proper in this honorable Court, pursuant to 28 U.S.C. §1391(e), in that Plaintiff may request a hearing on the matter in the district where Plaintiff resides.

**INTRADISTRICT ASSIGNMENT**

8. This lawsuit should be assigned to the San Francisco or Oakland Division of this court because a substantial part of the event or omission which give rise to this lawsuit occurred in Contra Costa County.

## EXHAUSTION OF REMEDIES

9. Plaintiff has exhausted his administrative remedies. The Plaintiff has supplied USCIS and the FBI with documents that clearly establish his eligibility to register as a permanent resident, and as will be demonstrated by the evidence, has followed up with numerous inquiries and requests to the pertinent administrative agencies attempting to expedite his delayed application.

## CAUSE OF ACTION

10. Plaintiff properly filed an I-485, *Application to Register Permanent Residence or Adjust Status*, based on an I-130, *Petition for Alien Relative*, filed by Plaintiff's daughter Lingyi Li.

This I-485 Application, the filing fee, along with all supporting documentation, was filed with the USCIS San Francisco District Office, on October 29, 2004 (**EXHIBIT 1**).

11. On December 29, 2004, Plaintiff submitted his fingerprints to the USCIS Application Support Center ("ASC") in Oakland, California (**EXHIBIT 2**).

12. Plaintiff contacted the USCIS San Francisco District Office to inquire into the status of his pending application. In a notice dated February 28, 2005, Plaintiff was informed that his application for permanent residence had been continued for security clearances, further review, and additional documentation. In a letter dated March 9, 2005, Plaintiff responded to USCIS' request for additional documentation (**EXHIBIT 3**).

13. Plaintiff contacted the USCIS San Francisco District Office to inquire into the status of his pending application. In an USCIS Inquiry Response dated August 23, 2006, Plaintiff was informed that his application was still pending the FBI security check (**EXHIBIT 4**).

14. It has been over 2 years and 7 months since Plaintiff first filed his I-485 with USCIS on October 29, 2004.

15. The Defendants have failed to properly adjudicate this petition within a reasonable time. They have improperly and unreasonably delayed the processing of Plaintiff's I-485 application after Plaintiff has paid for, and submitted, a properly executed application.

16. Although the role of Defendants is pivotal to the security of the United States of America, the Defendants' inaction has gone well beyond the expected 6 months processing time for the

1 adjudication of an I-485 Application (Please see the USCIS San Francisco District Office  
2 processing dates for I-485 cases posted on June 15, 2007 at **EXHIBIT 5**). Defendants have  
3 failed to adhere to their own processing times and procedures.

4 17. Defendants have sufficient information to determine Plaintiff's eligibility pursuant to  
5 applicable requirements and complete the processing procedures.

6 18. After numerous inquiries by Plaintiff, Defendants have unreasonably and inappropriately  
7 refused to adjudicate the petition, thereby depriving Plaintiff of the rights to which he is entitled.

8 19. Plaintiff has been greatly damaged by the failure of Defendants to act in accordance with  
9 their duties under the law. Specifically:

10 (a) Plaintiff has been unable to obtain legal permanent residence and thus cannot  
11 travel or work without restriction. He must pay additional filing fees each  
12 year in order to work and travel legally.

13 (b) Plaintiff is unable to accrue time to be eligible for naturalization as a citizen of  
14 the United States, thus delaying his obtainment of the rights and privileges  
15 enjoyed by citizens of the United States.

16 20. Defendants, in violation of the Administrative Procedures Act, 5 U.S.C. § 701 *et seq.*, are  
17 unlawfully withholding action on Plaintiff's application, and have unreasonably delayed action  
18 on Plaintiff's case.

19 21. Defendants in violation of the Administrative Procedures Act, 5 U.S.C. § 551 *et seq.*, are  
20 unlawfully delaying action on Plaintiff's application and have failed to complete the adjudicative  
21 functions delegated to them by law within a reasonable time.

22 22. Plaintiff has provided sufficient evidence of his attempts to secure adjudication of the I-  
23 485 application at issue, all to no avail. His administrative remedies have been exhausted.  
24 Accordingly, the Plaintiff has been forced to retain the services of an attorney to pursue the  
25 instant action.

#### 26 PRAYER

27 23. WHEREFORE, in view of the arguments and authority noted herein, Plaintiff  
28 respectfully prays that the Defendants be cited to appear herein and that, upon due consideration,

1 the Court enter an order:

- 2 (a) requiring Defendants to adjudicate Plaintiff's I-485 application forthwith;
- 3 (b) awarding reasonable attorney's fees pursuant to the Equal Access to Justice Act; and
- 4 (c) granting such other relief at law and in equity as justice may require.
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6 Dated: June 20, 2007

Respectfully Submitted,

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8 Justin Fok, CSBN: 242272  
9 Attorney for Plaintiff

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**EXHIBIT LIST**

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- 3 Exhibit 1: Receipt of I-485 filing dated October 29, 2004
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- 5 Exhibit 2: Plaintiff's ASC Fingerprint processing stamp dated December 29, 2004
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- 7 Exhibit 3: USCIS San Francisco District Office notice dated February 28, 2005 and response
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- 9 Exhibit 4: USCIS San Francisco District Office Inquiry Response dated August 23, 2006
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- 11 Exhibit 5: Processing Dates for the USCIS San Francisco District Office posted May 21,
- 12 2007
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# Exhibit 1

**Exhibit 1**



Department of Homeland Security  
630 Sansome Street  
San Francisco, CA 94111



U.S. Citizenship  
and Immigration  
Services

## Notice of Receipt

US DHS  
SAN FRANCISCO  
RETAIN THIS RECEIPT  
10:17AM Oct 29/04  
00-0000 002 SFR-PC  
#25977

Date: 12/15/2004

A No: 98-257-376

A # 00000000  
Last Name LI  
First Name ZHENGXIANG

Name: LI, ZHENXIANG

Address:

EL CERRITO, CA 94530

I-765 \$175.00  
I-131 \$165.00  
I-485 \$315.00  
FP-Fee/FD258 \$70.00  
I-130 OTHER \$185.00

Your Form I-485 Application for Adjustment of Status has been received and an interview appointment notice will be mailed to you separately. If you also apply for advance parole, notices for appearing to receive these benefits are also enclosed.

XTTL \$910.00  
Check \$165.00  
Check \$175.00  
Check \$185.00  
Check \$385.00

Please carefully review all of the other material enclosed. It may include evidence and documentation you must bring with you to your interview. Failure to bring all requested evidence and documents to your adjustment of status interview could result in immediate denial of your adjustment application. DO NOT mail documents to this office unless advised to do so.

**NOTICE:** You must not depart the United States without written permission from the Service while your application is pending. If you depart without permission your application will be denied. You may apply for advance parole to re-enter the United States to continue processing your application.

**ADVISORY:** If after April 1, 1997, you were unlawfully present in the United States for more than 180 days before filing for adjustment of status, you may be found inadmissible under Section 212(a)(9)(B)(I) of the Act when returning to the United States. If you are found inadmissible, you will need to qualify for a waiver of inadmissibility before your adjustment of status can be approved.

**CHANGE OF ADDRESS:** The change of address form included with this receipt is for your use to notify this office of any change of address. Please retain a copy for your records. Failure to notify this office in a timely manner of any change of address may result in denial of your applications for adjustment of status and employment authorization (EAD).

For: David N. Still, District Director

www.uscis.gov



## **Exhibit 2**

**Exhibit 2**

3-27

## **Exhibit 3**

**Exhibit 3**

Department of Homeland Security  
San Francisco, CA 94111U.S. Citizenship  
and Immigration  
Services

Zhenxiang LI

A 98-257-376

FEB 28 2005  
E-11 (PENDING)☒ HAND-DELIVERED to applicant

THIS LETTER IS IN REFERENCE TO YOUR APPLICATION FOR PERMANENT RESIDENCE.  
YOUR CASE HAS BEEN CONTINUED FOR THE REASON(S) CHECKED BELOW.

☐ Visa Availability ☐ Fingerprints ☒ Security Clearance(s) ☐ A-file(s) ☒ Further Review  
☒ Documentation (listed below) ☐ Other:

IT IS REQUESTED THAT YOU SUBMIT THE FOLLOWING DOCUMENTS:

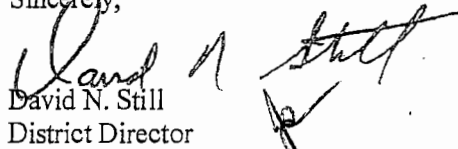
- Please submit a copy of the household record from China (with translations, if applicable). for beneficiary and petitioner.

YOU ARE ADVISED THAT YOU ARE GRANTED A PERIOD OF NINETY (90) DAYS FROM THE DATE OF THIS LETTER TO SUBMIT THE REQUESTED DOCUMENTS.

FAILURE TO COMPLY WITH THIS REQUEST WILL BE DEEMED GROUNDS FOR DENIAL OF YOUR APPLICATION FOR LACK OF PROSECUTION.

PLEASE SEND REQUESTED DOCUMENTS  
WITH A COPY OF THIS LETTER TO:

Sincerely,

  
David N. Still  
District DirectorCitizenship and Immigration Service  
630 Sansome Street, Room 200 / AOS  
San Francisco, CA 94111

ATTN: E11 / PENDING / A 98-257-376

cc: Justin Wang, Esq.

Date: 3/9/2005

To: Officer J. Cheling  
Fax: 415-844-5592

From: Beneficiary: Zhen Xiang Li      A 98 257 376  
Petitioner: Lingyi Li

Submitted please see the documents proven the beneficiary are the birthfather of the petitioner.

1. Household record;
2. Birth Certificate from the hospital showing the birth mother of petitioner;
3. Marriage Certificate;
4. Certified Birth Certificate.

Thank you for your assistance to this matter.

Sincerely yours



Lingyi Li

(510)



## **Exhibit 4**

**Exhibit 4**





Department of Homeland Security  
Bureau of Citizenship & Immigration Services  
San Francisco District Office  
630 Sansome Street Room 200  
San Francisco, CA 94111

## *USCIS INQUIRY RESPONSE*

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DATE: 8/23/2006

TO: Lingyi Li  
File Number: Zhenxiang Li (A#98 257 376)

COMMENTS: Regarding Inquiry

Please note that we are still waiting for a security check on your case from the FBI. We are unable to proceed with adjudication until this is complete.

On average such cases are assigned to an officer within a week of clearance for adjudication.

Thank you.

## **Exhibit 5**

**Exhibit 5**



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## **U.S. Citizenship and Immigration Services San Francisco CA Processing Dates Posted May 21, 2007**

**Notice:** U.S. Citizenship and Immigration Services (USCIS) has improved the reporting procedure for processing times of immigration benefit applications. In the past, USCIS benefit processing reports indicated the specific type of applications or petitions that were being processed and the date the cases were received. However, the date the case was received did not provide a clear indication of when USCIS expected to complete the case, nor did it provide a clear indication of USCIS' commitment to process cases within a certain cycle time. It also did not align with the processing times and cycle times the agency reports in other contexts.

This improved reporting procedure is an effort to give our customers more accurate information that better reflects current processing time and USCIS service level commitments. Effective immediately, when we are completing applications and petitions within our service level goals we will report that as the processing time. For example, when our service level goal is to process a particular kind of case within six months, and if our processing time is six months or less, we will show a date consistent with our service level goal because that reflects our commitment.

When we are not meeting our service level goal, the date posted will reflect the filing date of cases that are being completed. It should be noted that while in some instances reported processing dates may appear to have regressed due to this change, they do not reflect a lengthening of USCIS processing times, but simply the change in reporting. Our goal is to provide accurate projections and thus give customers clear expectations as to what they can expect as a processing time.

### **There are several important exceptions to the processing times shown below:**

- Case processing will be delayed if we must ask you for more evidence or information.  
If we ask for missing required initial evidence, count the processing time from when we receive that missing evidence.
- The case processing timeframe will start over if a customer doesn't appear for an interview or asks that it be rescheduled.

### **What if I have a problem or have questions about a case?**

We offer a variety of services after you file. For example, for most kinds of cases you can [check the status of your case online](#).

For more information about when and how to contact us, whether your case is outside our processing time or if there are other issues, please see our fact sheet –

Case Services - How do I... know what kind of services are available to me after I file my application or petition?

One additional point about these projections. They are the time to complete processing and mail the actual notice and/or document. If you check case status online and see that your case has been approved, and you haven't yet received your approval notice or document in the mail, we ask that you wait thirty days from the approval date before contacting us. That is because it may take that long before it is returned to us as undeliverable. You can also print the case status online answer for your records.

District Office Processing Dates for **San Francisco CA** Posted May 21, 2007

Form	Form Name	Now Processing Cases with Receipt Notice Date of:
<b>I-131</b>	Application for Travel Documents	February 12, 2007
<b>I-485</b>	Application to Register Permanent Residence or Adjust Status	November 13, 2006
<b>I-600</b>	Petition to Classify Orphan as an Immediate Relative	February 09, 2007
<b>I-600A</b>	Application for Advance Processing of Orphan Petition	February 09, 2007
<b>I-765</b>	Application for Employment Authorization	February 26, 2007
<b>N-400</b>	Application for Naturalization	October 12, 2006
<b>N-600</b>	Application for Certification of Citizenship	February 12, 2007

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